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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHUCK MacCONNACH et al., individually, and) Case No. 3:08-cv-04154
on behalf of all others similarly situated,)

Plaintiffs,)

v.)

FIRST FRANKLIN FINANCIAL CORP.,)
et al.,)

Defendants.)

**JOINT STIPULATION AND ~~PROPOSED~~
ORDER FOR RESENDING NOTICE TO
CLASS MEMBERS AND IMPLEMENTING
A REVISED SCHEDULE**

1 On July 24, 2009, the Court approved the settlement of the FLSA collective action in this case
2 and granted preliminary approval of the proposed settlement in the Rule 23 class action. [Doc. #51].
3 Pursuant to the Court's Order, the parties' proposed allocation formula was used to calculate awards for
4 the FLSA and Rule 23 class members and notice was sent to the class members by first class mail. (*Id.*
5 at 2-3). To date, there have been no objections to the settlement. A hearing for the motions for final
6 approval of the settlements and for attorney fees and expenses is set for November 13, 2009.¹

7
8 In the course of finalizing the settlement data, however, the parties have discovered an error in
9 the settlement allocation formula used to calculate the class members' awards. The error stems from the
10 parties' examination of the Defendants' payroll data; the payroll data came from two different sources
11 and proved to be exceedingly complex, making it difficult to merge into one comprehensive source for
12 calculation purposes. As a result, although Plaintiffs' calculation error is not substantial in the
13 aggregate, it did not produce the proper allocations for the class members.

14
15 The parties believe that notice should be resent to all eligible Plaintiffs and class members,
16 informing them of the correct estimated settlement allocations, affording them a new opportunity to
17 object to or request exclusion from the settlement, and affording those who did not submit a claim an
18 opportunity to do so.² The parties respectfully request that they be directed to submit a proposed
19 schedule to the Court, no later than November 13, 2009, which will govern resending notice, a new time
20 period for the Plaintiffs and class members to respond, and a new date for the final approval hearing.

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22 IT IS HEREBY STIPULATED by and among the parties hereto, through their respective counsel
23 of record, as follows:
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25
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28 ¹ On October 30, 2009, the parties filed a joint stipulation requesting that Plaintiffs be allowed until November 4, 2009, to file the motions for final approval of the settlements and for attorney fees and expenses.

² Plaintiffs will bear the costs associated with this process and will not seek to recover these costs from the maximum settlement amount.

1 The final approval hearing scheduled for November 13, 2009, is postponed; the parties shall
2 submit a proposed schedule to the Court by November 13, 2009, which will govern the resending of
3 notice (consistent with the Settlement Agreement previously approved by the Court), an additional
4 period for class members to respond, and a new date for the final approval hearing.
5

6
7 DATED: November 4, 2009

By: /s/

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Attorneys for Plaintiffs

26
27 DATED: November 4, 2009

By: /s/

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Attorneys for Defendants
First Franklin Financial Corporation and
Merrill Lynch & Co., Inc., as named and as
erroneously sued as Global Markets and
Investment Banking Group

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED,

Dated: November 10, 2009

United States District Court

